

CAUTION: The following advice may be based on a rule that has been revised since the opinion was first issued. Consequently, the analysis reflected in the opinion may be outdated.

IC 4-2-6-9(a) Conflicts of interest

40 IAC 2-1-8 Moonlighting

A fire inspector in the State Fire Marshal's office sought to serve as the volunteer chief of a local fire department. SEC found there was no conflict of interest in the inspector serving as the volunteer chief and, although there were areas of overlap of authority and possible legal complications in serving in the two positions, such concerns posed management, rather than ethics, problems.

**92-I-5 Conflict of interest, Moonlighting
(Decided June 18, 1992)**

FACT SITUATION

The Director of the State Emergency Management Agency and Department of Fire and Building Services wanted to determine if it was a violation of the conflict of interest and moonlighting provisions for a state fire inspector in the State Fire Marshal's office to serve as a fire chief for a local voluntary fire department. The policy of the State Fire Marshal's office prohibited fire inspectors from holding a second job pertaining to what they do, but specifically permitted an inspector to be on a local volunteer fire department.

The state employee was a field inspector in six counties in the Evansville area. Inspectors duties included inspections of new or renovated construction and existing buildings for compliance with applicable fire codes, building safety rules, state and federal law, rules and regulations of other state agencies (i. e., the Department of Public Welfare, State Board of Health, and Department of Mental Health), and accepted plans and specifications. These duties called for an inspector to investigate, prepare reports, conduct follow-up inspections, and serve as a witness in court on fire and safety code issues.

The state employee was also chief of his township's volunteer fire department. The township was forty-nine square miles and was within the six counties he served as fire inspector. The township's fire department was set up under statute as a volunteer fire department and non-profit corporation governed by a board of directors who had to be residents of the township. The board was at the time made up of members of the fire department. The budget for the township's fire department was \$140,000 of which \$110,000 came from the taxing authority. The balance was raised through a fund drive. As chief, the state employee was responsible for directing operations of the fire department including prevention, fire investigation, and personnel education. He directed operations at emergencies, insured proper management and discipline of members, carried out the policies approved by the board of directors, reported to the board, developed a budget sufficient to operate the department, approved expenditures of money budgeted, and ensured that accurate records were kept. A fire chief was required to file monthly run activities, fire investigations, and fatalities reports with the State Fire Marshal's office. He was also responsible for inspecting all industrial and commercial property within the township's first response district. The fire chief was paid on a point system and received a clothing allowance. During the previous year, he earned \$392.

According to IC 36-8-17-5, the fire chief in every fire department is an assistant to the state fire marshal and shall comply with the order issued by the fire marshal's office directing the fire department to assist the fire marshal's office.

Areas of potential overlapping in responsibilities in the two offices included inspections, investigations, training, and dealings as a state employee with the fire department of which he was chief. Local fire department training programs did not have to be approved by nor was a fire department certified by the State Fire Marshal's office. The township's fire department had

applied for certification as a rescue squad through the State Emergency Management Agency, another state agency under the same director.

The state employee as a fire inspector inspected three schools and one nursing home in his township. When another fire department called him for assistance in a fire investigation as to the cause and origin of a fire, he asked if the fire department wanted him to do an official investigation as a State Fire Marshal or help as a fire chief.

The current Fire Marshal testified that it was beneficial to the agency to have employees willing to volunteer time to their community as volunteer firefighters. He felt that it was an asset to state government to have employees who are trained to do a number of things. It was extremely difficult to find people willing to serve as volunteer firefighters, partly due to a growing number of federal regulations.

QUESTION

Is a fire inspector in the State Fire Marshal's office permitted to serve as a volunteer fire chief of a local fire department?

OPINION

The Commission found it was not a conflict of interest for an inspector of the State Fire Marshal's office to serve as chief of a volunteer fire department. The State Fire Marshal's office was to screen an employee serving on a volunteer fire department from investigations and decisions relating to that fire department.

Although there were areas of overlap of authority and possible legal complications in serving in the two positions, the State Ethics Commission felt that, rather than constituting violations of the conflict of interest statute or the moonlighting rule, these posed management problems. In weighing the benefits, the Commission thought there was an overriding public policy consideration in favor of allowing employees to serve as volunteer firefighters and fire chiefs.

The relevant rules are as follows:

40 IAC 2-1-8 on moonlighting provides, " A state employee shall not engage in outside employment or other outside activity not compatible with agency rules or the full and proper discharge of public duties and responsibilities. This outside employment or other outside activity must not impair independence of judgment as to official responsibilities, pose a likelihood of conflict of interest, or require or create an incentive for the employee to disclose confidential information acquired as a result of official duties."

IC 4-2-6-9(a) on conflicts of interest provides, " A state officer or employee may not participate in any decision or vote of any kind in which the state officer or the employee or that individual's spouse or unemancipated children has a financial interest."